

THE HONORABLE JAMES L. ROBART

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION,
Plaintiff,
vs.
MOTOROLA, INC., et al.,
Defendants.
MOTOROLA MOBILITY LLC, et al.,
Plaintiffs,
vs.
MICROSOFT CORPORATION,
Defendants.

Case No. C10-1823-JLR

**DECLARATION OF LEO DEL
CASTILLO IN SUPPORT OF
MICROSOFT'S MOTION TO SEAL
CONFIDENTIAL DOCUMENTS**

NOTED: Friday November 9, 2012

I, Leo Del Castillo, do hereby declare:

1. I am the General Manager of the Xbox Hardware Development Team at Microsoft. I am familiar with Microsoft's internal product development and strategic marketing plans with respect to its Xbox line of products and accessories. I am also familiar with Microsoft's efforts to keep those plans confidential and the potential ramifications of the

DECLARATION OF LEO DEL CASTILLO IN
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SEAL CONFIDENTIAL DOCUMENTS - 1

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1 public disclosure of such plans. I make this declaration based on my personal knowledge
2 unless otherwise indicated.

3 2. I understand that Defendants in the above-captioned matter intend to introduce
4 at trial certain materials that disclose Microsoft's highly confidential current and future product
5 development and strategic marketing plans relating to its Xbox line of products and
6 accessories, including documents that I understand have been identified as Trial Exhibit
7 numbers 2125, 2138, 2353, 2366, 2385, 2584, 2585, 2687, 2688, 2689, 2727, 2730, 2908, and
8 3180. I will refer to these documents collectively as "Confidential Xbox Strategic Planning
9 Documents".

10 3. Many of the Confidential Xbox Strategic Planning Documents, including Trial
11 Exhibits 2138, 2353, 2385, 2688, 2689, and 2730, contain detailed and highly sensitive product
12 development and marketing plans for the next generation Xbox game console. These materials
13 describe Microsoft's business plans relating to this yet-to-be-released major product, which
14 disclose Microsoft's strategic objectives, product feature descriptions and analysis, technical
15 product specifications, development and marketing timelines, market analyses, and cost
16 information. These are proprietary materials that consist of trade secrets not known to the
17 public or Microsoft's competitors. Microsoft takes pains to ensure that such information
18 remains confidential. Even within Microsoft, distribution of such materials is limited to those
19 who need access to the information in order to perform their specific job responsibilities with
20 respect to implementation of these specific business plans. In addition, before being allowed
21 access to such sensitive information, Microsoft employees must execute an agreement re-
22 affirming the terms of the standard in-house employee non-disclosure agreement. Electronic
23 access to these highly confidential materials within Microsoft is also restricted by way of
24 secure Sharepoint websites and digital rights management protocols, further ensuring that only
25 authorized individuals have access to these materials.

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1 4. The remainder of the Confidential Xbox Strategic Planning Documents contain
2 detailed and highly sensitive product development and marketing plans for current Xbox
3 products and accessories. These materials describe Microsoft's business plans relating to
4 existing products and accessories, which disclose Microsoft's strategic objectives, product
5 feature descriptions and analysis, technical product specifications, development and marketing
6 timelines, market analyses, cost and revenue information. These are proprietary materials that
7 consist of trade secrets not known to the public or Microsoft's competitors. Microsoft takes
8 pains to ensure that such information remains confidential. Even within Microsoft, distribution
9 of such materials is limited to those who need access to the information in order to perform
10 their specific job responsibilities with respect to implementation of the plans. In addition,
11 since approximately late 2008 or early 2009 (during the development of the Xbox 360-S game
12 console), before being allowed access to such sensitive information, Microsoft employees have
13 been required to execute an agreement re-affirming the terms of the standard in-house
14 employee non-disclosure agreement. Electronic access to these highly confidential materials
15 within Microsoft is also restricted by way of secure Sharepoint websites and digital rights
16 management protocols, further ensuring disclosure of the materials only to authorized
17 individuals.

18 5. Public disclosure of Microsoft's Confidential Xbox Strategic Planning
19 Documents and disclosure of the trade secrets contained therein would cause competitive harm
20 to Microsoft. Microsoft faces intense competition from its primary rivals in the game console
21 market, Sony and Nintendo. Microsoft seeks to differentiate its product offerings from those
22 of its competitors, providing its customers with a higher quality product, exclusive features and
23 a superior user experience. Microsoft invests heavily in its effort to achieve these goals, and
24 expends significant time, effort and resources developing its product and marketing plans to
25 reach these objectives. Disclosure of Microsoft's Confidential Xbox Strategic Planning

1 Documents would reveal Microsoft's plans to its competitors, exposing Microsoft's strategic
2 objectives and providing to its competitors at no cost, the roadmaps that Microsoft has
3 developed at substantial cost over years of effort. Microsoft's competitors should not be
4 permitted to gain this unfair advantage over Microsoft.

5 6. I also understand that Microsoft may introduce at trial a version of Microsoft's
6 "Xbox Technical Publisher's Guide" (Trial Exhibit 288). This document contains detailed and
7 technical information necessary for third party publishers to develop applications for Xbox
8 Live and Xbox 360. This information is confidential and proprietary, and is shared only with
9 third party publishers under a non-disclosure agreement to ensure that the information is not
10 publicly disclosed. The Xbox Technical Publisher's Guide details the set of guidelines and
11 requirements Microsoft has developed, through investment of significant time, effort, and
12 resources, as a means to guarantee a level of quality in the product which Microsoft deems a
13 differentiating advantage. Public disclosure of this information would put Microsoft at a
14 competitive disadvantage. Disclosure of these policies would allow our competitors access to
15 this work without the same level of investment, conferring an unfair and unearned competitive
16 advantage.

17 7. Finally, I understand that there is a high likelihood that the parties will seek to
18 introduce evidence regarding highly confidential past sales and revenue data and highly
19 confidential future sales and revenue projections for Microsoft products, including its Xbox
20 products and accessories.

21 8. Microsoft does not disclose to the general public its detailed and product-
22 specific financial information, which is treated as highly sensitive and proprietary information.

23 9. Disclosure of this information, and in particular disclosure of sales and revenue
24 projections relating to Microsoft's Xbox products and accessories, would have the potential to lead
25 to competitive harm by creating an asymmetry of information between Microsoft and its primary

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1 competitors, whose sales and revenue results and projections are not public. Microsoft's
2 competitors could use this information to discern and anticipate Microsoft's past and future
3 confidential business and marketing strategies, and to evaluate the success of those confidential
4 strategies. This may result in a shift in the marketing and advertising strategies of Microsoft's
5 competitors in a way that increases competitive pressure on Microsoft in certain market segments,
6 resulting in reduced market share for Microsoft.

7
8 I swear under penalty of perjury under the laws of the United States of America, that
9 the foregoing is true and correct.

10 DATED this 1st day of November, 2012.

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12 LEO DEL CASTILLO

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CERTIFICATE OF SERVICE

I, Linda Bledsoe, swear under penalty of perjury under the laws of the State of Washington to the following:

1. I am over the age of 21 and not a party to this action.
2. On the 1st day of November, 2012, I caused the preceding document to be served on counsel of record in the following manner:

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8 DATED this 1st day of November, 2012.

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LINDA BLEDSOE

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